

1 MARK E. FERRARIO
2 Nevada Bar No. 1625
3 WHITNEY L. WELCH-KIRMSE
4 Nevada Bar No. 12129
5 **GREENBERG TRAURIG, LLP**
6 3773 Howard Hughes Parkway, Suite 400 N
7 Las Vegas, NV 89169
8 Telephone: (702) 792-3773
9 Facsimile: (702) 792-9002
10 Email: ferrariom@gtlaw.com
11 welchkirmsew@gtlaw.com

12 *Counsel for Defendant Hotel Nevada and
13 Gambling Hall, Ltd.*

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

10 RAQUEL JACOBS, an individual,
11 Plaintiff,

12 vs.

13 HOTEL NEVADA AND GAMBLING HALL,
14 LTD., a Domestic Limited-Liability Company;
15 DOES I through X inclusive, and, ROE
16 CORPORATIONS I through X, inclusive,

17 Defendants.

18 Case No.: 2:17-CV-02517

19
20
21
22
23
24
25
26
27
28

**STIPULATED CONFIDENTIALITY
AGREEMENT AND PROTECTIVE ORDER**

17 Pursuant to the Stipulation contained herein by and among counsel for Plaintiff RAQUEL
18 JACOBS ("Plaintiff") and counsel for Defendant HOTEL NEVADA AND GAMBLING HALL,
19 LTD. ("Hotel Nevada"), the Court hereby finds as follows:

20
21
22
23
24
25
26
27
28

PURPOSES AND LIMITATIONS

22 Disclosure and discovery activity in this action are likely to involve production of
23 confidential, proprietary, or private information for which special protection from public disclosure
24 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
25 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective
Order. The parties acknowledge that this Order does not confer blanket protections on all
disclosures or responses to discovery, or any categories of information not specifically addressed
herein, and that the protection it affords from public disclosure and use extends only to the limited

1 information or items that are entitled to confidential treatment under the applicable legal principles,
2 and designated "confidential" as described herein. The parties further acknowledge, as set forth
3 further below, that this Stipulated Protective Order does not entitle them to file confidential
4 information under seal or otherwise change Federal or Local rules, procedures, and standards to be
5 applied when a party seeks permission from the court to file material under seal.

6 1. The "Litigation" shall mean the above-captioned case, pending in the United States
7 District Court, District of Nevada Case No. 2:17-CV-02517.

8 2. "Documents" or "Information" shall mean and include any documents or portions
9 thereof, or information extracted therefrom, (whether in hard copy or electronic form), records,
10 correspondence, analyses, assessments, statements (financial or otherwise), responses to discovery,
11 tangible articles or things, whether documentary or oral, and other information provided, served,
12 disclosed, filed, or produced, whether voluntarily or through discovery or other means, in
13 connection with this Litigation. A draft or non-identical copy is a separate document within the
14 meaning of these terms.

15 3. "Party" (or "Parties") shall mean one party (or all parties) in this Litigation and their
16 in-house and outside counsel. "Producing Party" shall mean any person or entity who provides,
17 serves, discloses, files, or produces any Documents or Information. "Receiving Party" shall mean
18 any person or entity who receives any such Documents or Information.

19 4. Any Party may designate any document, object, file, photograph, video, tangible
20 thing, interrogatory answers, answers to requests for admissions, testimony, or other material or
21 copies thereof (collectively, the "Discovery Material") as "Confidential Information" or following a
22 good faith determination that the information so designated is or may reveal confidential, or
23 proprietary matters.

24 **EXERCISE OF RESTRAINT AND CARE IN DESIGNATING MATERIAL FOR**
PROTECTION

26 6. Each Party or Non-Party that designates information or items for protection under
27 this Order must take care to limit any such designation to specific material that qualifies under the
28 appropriate standards. Indiscriminate or routinized designations are prohibited.

MANNER AND TIMING OF DESIGNATIONS

7. CONFIDENTIAL Documents shall be so designated prior to their production by marking or stamping each page of the Document produced to or received from a Party with the legend "CONFIDENTIAL." The application of the legend must be made in a manner so as not to render the documents illegible, illegible after photocopying, or incapable of being subjected to Optical Scanning Recognition. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

8. Testimony taken at a deposition, or in other pretrial or trial proceedings, may be designated as CONFIDENTIAL by any Party making a statement to that effect on the record at the deposition. Arrangements shall be made with the court reporter taking and transcribing such deposition to separately bind such portions of the transcript and deposition exhibits containing Information designated as CONFIDENTIAL, and to label such portions appropriately. Counsel for the Parties may also designate an entire deposition transcript as CONFIDENTIAL at the time of the deposition. A party's failure to designate testimony confidential at the time of deposition shall not constitute the party's waiver of its right to correct its failure prior to a date ten business days after the party's receipt of the transcript, in which case all receiving parties shall honor the late designation as it would an inadvertent disclosure pursuant to paragraph 16 below.

9. For information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

ACCESS TO AND USE OF PROTECTED MATERIAL

10. CONFIDENTIAL Information shall be maintained in strict confidence by the Parties who receive such information, shall be used solely for the purposes of this Litigation, and shall not be disclosed to any person except:

(a) The United States District Court, District of Nevada, or any other court to which this matter may be transferred (the “Court”), so long as the party seeking to file a confidential document under seal complies with the Ninth Circuit’s directives in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006) and the Court’s electronic filing procedures set forth in Local Rule 10-5(b);

(b) In the event of an appeal, the United States Court of Appeals (the "Appellate Court") and/or the United States Supreme Court (the "Supreme Court"), so long as that document is filed under seal;

(c) The attorneys of record in this Litigation and their co-shareholders, co-directors, partners, employees, and associates who are assisting in the Litigation (collectively hereafter referred to as "Outside Counsel");

(d) A Party, or an officer, director, or employee of a Party or of a Party's affiliate, as long as any such person agrees to be bound by the terms and conditions of this Agreement.

(e) Subject to the terms of Paragraph 14 below, experts or consultants and their staff, retained by the Parties and/or Outside Counsel in this Litigation for the purposes of this Litigation;

(f) Any other person, only if the Receiving Party has given written notice to the Producing Party of an intent to disclose specified CONFIDENTIAL Information to said person, who shall be identified by name, address, phone number, and relationship, if any, to the Receiving Party, and the Producing Party has not provided a written objection to the disclosure within ten (10) business days of delivery of the notification. In the event of an objection, no disclosure shall be made pending the resolution of the objection. Before any person may receive Documents or Information pursuant to this subparagraph, he or she must comply with the requirements of Paragraph 13 below.

(g) Any person identified on the document itself as having created, sent, received, or otherwise already viewed, the document.

(h) Any person testifying at deposition in this matter, subject to the paragraph 9 below.

3 11. If a witness is providing or is provided CONFIDENTIAL Information during a
4 deposition, counsel for the Producing Party may request that all persons other than the witness and
5 persons entitled by this Order to have access to the CONFIDENTIAL Information leave the
6 deposition room during that portion of the deposition other than the court reporter. Failure of any
7 person to comply with such a request will constitute sufficient justification for the witness to refuse
8 to answer the question, or for the Producing Party to demand that CONFIDENTIAL Information
9 not be provided to the witness, pending resolution of the issue.

CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 12. A party may object to the designation of particular information as CONFIDENTIAL
12 by giving written notice to the party designating the disputed Information. Any Party or Non-Party
13 may challenge a designation of confidentiality at any time. Unless a prompt challenge to a
14 Designating Party's confidentiality designation is necessary to avoid foreseeable, substantial
15 unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a
16 Party does not waive its right to challenge a confidentiality designation by electing not to mount a
17 challenge promptly after the original designation is disclosed. The written notice shall identify the
18 Information to which the objection is made. If the parties cannot resolve the objection within ten
19 (10) business days after the time the notice is received, it shall be the obligation of the party
20 designating the Information as CONFIDENTIAL to file an appropriate motion requesting that the
21 Court determine whether the disputed Information should be subject to the terms of this Protective
22 Order. If such a motion is filed within ten (10) business days after the date the parties fail to
23 resolve the objection, the disputed Information shall be treated as CONFIDENTIAL under the terms
24 of this Protective Order until the Court rules on the motion. If the designating party fails to file
25 such a motion within the prescribed time, the disputed Information shall lose its designation as
26 CONFIDENTIAL and shall not thereafter be treated as CONFIDENTIAL in accordance with this
27 Protective Order. In connection with a motion filed under this provision, the party designating the

1 Information as CONFIDENTIAL shall bear the burden of establishing that good cause exists for the
2 disputed Information to be treated as CONFIDENTIAL.

3 13. While protected by this Order, any Information designated CONFIDENTIAL shall
4 be held in strict confidence by each person to whom it is disclosed; shall be used solely for the
5 purposes of this Litigation; and shall not be used for any other purpose, including, without
6 limitation, use in any other lawsuit. Documents and Information previously produced by the parties
7 may be designated "Confidential" within 30 days after the date of this Order.

8 14. With respect to outside experts or other persons pursuant to Paragraph 8, to become
9 an authorized expert or other person entitled to access to CONFIDENTIAL Information, the expert
10 or other person must be provided with a copy of this Order and must sign a certification in the form
11 attached as Exhibit A hereto acknowledging that he/she has carefully and completely read,
12 understands, and agrees to be bound by this Order. The Party on whose behalf such a Certification
13 is signed shall retain the original Certification.

14 15. Notwithstanding any other provision herein, nothing shall prevent a Party from
15 revealing CONFIDENTIAL Information to a person who created or previously received (as an
16 addressee or by way of copy) such Information.

INADVERTENT FAILURE TO DESIGNATE

16 16. The inadvertent production of any Information without it being properly marked or
17 otherwise designated shall not be deemed to waive any claim of confidentiality with respect to such
18 Information. If a Producing Party, through inadvertence, produces any CONFIDENTIAL
19 Information without marking or designating it as such in accordance with the provisions of this
20 Order, including deposition testimony, the Producing Party may, promptly on discovery, furnish a
21 substitute copy properly marked along with written notice to all Parties (or written notice alone as to
22 non-documentary Information) that such Information is deemed CONFIDENTIAL and should be
23 treated as such in accordance with the provisions of this Order. Each receiving person must treat
24 such Information as CONFIDENTIAL in accordance with the notice from the date such notice is
25 received. Disclosure of such CONFIDENTIAL Information prior to the receipt of such notice shall
26 not be deemed a violation of this Confidentiality Agreement. A Receiving Party who has disclosed
27
28

1 such CONFIDENTIAL Information prior to the receipt of such notice shall take steps to cure such
2 disclosure by requesting return of the original document and substituting it with the properly
3 marked one.

4 **NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS**
5 **LITIGATION**

6 17. The terms of this Order are applicable to information produced by a Non-Party in
7 this action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in
8 connection with this litigation is protected by the remedies and relief provided by this Order.
9 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional
10 protections.

11 18. A copy of this Order shall be shown to each attorney acting as counsel for a Party
12 and to each person to whom CONFIDENTIAL Information will be disclosed.

13 19. Nothing in this Order shall be construed as an admission or agreement that any
14 specific Information is or is not confidential, subject to discovery, relevant, or admissible in
15 evidence in any future proceeding.

16 20. Right to Further Relief. Nothing in this Order abridges the right of any person to
17 seek its modification by the court in the future.

18 21. Right to Assert Other Objections. By stipulating to the entry of this Protective Order
19 no Party waives any right it otherwise would have to object to disclosing or producing any
20 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
21 Party waives any right to object on any ground to use in evidence of any of the material covered by
22 this Protective Order.

23 22. The Parties shall comply with the requirements of Local Rule 10-5(b), and the Ninth
24 Circuit's decision in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir.
25 2006), with respect to any documents filed under seal in this matter.

26 23. This Order shall not be construed to prevent any Party from making use of or
27 disclosing Information that was lawfully obtained by a Party independent of discovery in this

1 Litigation, whether or not such material is also obtained through discovery in this Litigation, or
2 from using or disclosing its own CONFIDENTIAL Information as it deems appropriate.

3 24. If either Party becomes required by law, regulation, or order of a court or
4 governmental entity to disclose any CONFIDENTIAL Information that has been produced to it
5 under the terms of this Order, such Party will reasonably notify the other Parties, in writing, so that
6 the original Producing Party has an opportunity to prevent or restrict such disclosure. The Party
7 required to disclose any CONFIDENTIAL Information shall use reasonable efforts to maintain the
8 confidentiality of such CONFIDENTIAL Information and shall cooperate with the Party that
9 originally produced the Information in its efforts to obtain a protective order or other protection
10 limiting disclosure; however, the Party required to disclose the Information shall not be required to
11 seek a protective order or other protection against disclosure in lieu of, or in the absence of, efforts
12 by the Producing Party to do so.

13 25. Upon termination of this Litigation, either by settlement or other action, any Party
14 and its counsel that obtained CONFIDENTIAL Information through discovery shall, upon request,
15 return all such CONFIDENTIAL Information to the Producing Party or certify as to its destruction.
16 Counsel may retain CONFIDENTIAL Information solely for archival purposes. The restrictions of
17 this Protective Order shall apply to Counsel for as long as they hold such archival Documents.

18 26. The obligation to treat all Information designated as CONFIDENTIAL in accordance
19 with the terms of this Order and not to disclose such CONFIDENTIAL Information shall survive
20 any settlement or other termination of this Litigation.

21 27. The inadvertent production of any Information during discovery in this action shall
22 be without prejudice to any claim that such Information is subject to the attorney-client privilege or
23 is protected from discovery as attorney work product. No Party shall be held to have waived any
24 rights by such inadvertent production. Upon notification of inadvertent production, the receiving
25 Party shall not use or divulge the contents of such Information unless subsequently agreed to by the
26 Producing Party or permitted by the Court. Any such inadvertently produced Information shall be
27 returned by the Receiving Party within three business days of any written request therefore. The
28

1 Receiving Party retains the right to challenge the Information as not privileged or otherwise
2 protected and discoverable.

3 28. The Parties may seek modification of this Order by the Court at any time, by
4 stipulation or for good cause.

5 **IT IS SO STIPULATED.**

6
7 DATED this 11th day of April, 2018.

DATED this 11th day of April, 2018.

8 **HATFIELD & ASSOCIATES, LTD.**

GREENBURG TRAURIG, LLP

9 */s/Trevor J. Hatfield*
10 TREVOR J. HATFIELD, ESQ.
Nevada Bar No. 7373
11 703 S. Eighth Street
Las Vegas, Nevada 89101
12 Attorney for Plaintiff

/s/Whitney L. Welch-Kirmse
13 MARK E. FERRARIO, ESQ.
Nevada Bar No. 1625
14 WHITNEY L. WELCH-KIRMSE, ESQ.
Nevada Bar No. 12129
3373 Howard Hughes Parkway, Suite 400N
Las Vegas, Nevada 89169
15 Attorneys for Defendant

Greenberg Traurig, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
(702) 792-3773
(702) 792-9002 (fax)

16 **IT IS HEREBY ORDERED.**

ORDER

17 DATED this 19th day of April, 2018.

18
19 
20 UNITED STATES MAGISTRATE JUDGE

1 **EXHIBIT A**
2
3
4

5 **UNITED STATES DISTRICT COURT**
6
7 **DISTRICT OF NEVADA**

8 RAQUEL JACOBS, an individual,
9 Plaintiff,
10 vs.

11 Case No.: 2:17-CV-02517

12 HOTEL NEVADA AND GAMBLING HALL,
13 LTD., a Domestic Limited-Liability Company;
14 DOES I through X inclusive, and, ROE
15 CORPORATIONS I through X, inclusive,

16 Defendants.

17 I have read the Stipulated Confidentiality Agreement & Protective Order in the above-
18 captioned case. I understand the terms of the Order, I agree to be fully bound by the terms of the
19 Order, and I hereby submit to the jurisdiction of the United States District Court for the District of
20 Nevada for purposes of enforcement of the Order.

21 Date: _____

22 Signature: _____

23 Signatory's Name, Business Affiliation, and
24 Business Address:
25
26
27
28